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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,387	04/11/2001	Frederick Baker	CISCP202	3782
22434	7590	06/20/2005	EXAMINER	
BEYER WEAVER & THOMAS LLP P.O. BOX 70250 OAKLAND, CA 94612-0250			OSMAN, RAMY M	
			ART UNIT	PAPER NUMBER
			2157	

DATE MAILED: 06/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/833,387

Applicant(s)

BAKER ET AL.

Examiner

Ramy M. Osman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Status of Claims

1. This communication is responsive to the amendment filed on June 2, 2005. Applicant amended claim 6. No claims were cancelled or added. Claims 1-29 are pending.

Claim Objections

2. Claim 9 objected to because of the following informalities:

Remove the limitation "response fragments" on line 2 of the claim.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
4. Claims 4,10,16,25 and 29 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claims state that the "bits are randomly generated". However, nowhere in the specification is this limitation described. Applicants fail to disclose how the bits are randomly generated, the degree of

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randomness, and how “random bits” are distinguishable from real data. The disclosure does not explain how bits are randomly generated.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1,6,11,14,17 and 26 rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Regarding line 12 of the claims, it is unclear how the information is provided for selecting a server. From the claim language, it cannot be determined if the “information for selecting a server” is embedded in the padded bits or if the “information for selecting a server” is derived from some sort of processing. It is not clear whether this “information” is provided in a direct manner (meaning it is possible to be embedded in the padded bits) or in an indirect manner (meaning that ample bandwidth is available, as applicant suggests). The claim language is indefinite.

7. Claim 6 rejected under 35 U.S.C. 112, second paragraph, as being indefinite. In lines 7-8, applicant fails to explicitly state how the network layer length is greater than the transport layer length and the network layer header length. The network layer length is inherently greater than the sum of the transport layer length and the network layer header length. This is because the network layer length inherently includes the transport layer length, the transport layer header length and the network layer header length. Therefore claim language is unclear as to what is being accomplished.

8. Claim 6 recites the limitation “the server selection system” in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. **Claims 1,3,5,11,13,14,17-19,21,22 and 26 rejected under 35 U.S.C. 102(e) as being anticipated by Jindal (US Patent No 6,092,178).**

11. In reference to claims 1,11,17 and 26, Jindal teaches a method, program instructions and an apparatus for providing information for selecting a content server to a network node associated with a client (Abstract), the method comprising:

receiving a request for a response, wherein the request corresponds to a message transmitted by a network node associated with a client for selecting a content server (column 2 line 65 – column 3 line 25 and column 5 lines 20-67);

providing a response datagram, the response datagram associated with the received request, wherein network requirements allow transmission of the response datagram to the network node without padding the response datagram (column 3 lines 25-55, column 6 lines 40-60 and column 7 lines 50-67);

providing a padded response datagram, wherein the padded response datagram is obtained by padding the response datagram with an arrangement of bits (column 3 lines 12-35 & 46-66, column 6 lines 40-60 and column 7 lines 50-67); and

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transmitting the response to the network node associated with the client for selecting a content server wherein reception of the response by the network node provides information for selecting a content server (column 3 lines 49-57 and column 9 lines 34-67);

12. In reference to claims 3,13,21 and 22, Jindal teaches the method, program instructions and apparatus of claims 1,12 and 17 respectively, wherein the response is a DNS reply (column 3 lines 49-57).

13. In reference to claims 5 and 18, Jindal teaches the method and apparatus of claims 1 and 17 respectively, wherein the network node responsible for selecting a content server is a local domain name server (column 3 lines 5-25 and column 5 lines 45-67).

14. In reference to claim 14, Jindal teaches the method of claim 13 wherein reception of the padded response datagram by the network node provides bandwidth information to the network node associated with the client (column 3 line 55 – column 4 line 20 and column 9 lines 34-55, Jindal teaches fastest response time).

15. In reference to claim 19, Jindal teaches the apparatus of claim 17, wherein the network node associated with the client is a server selection system (Abstract).

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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17. Claims 2,12 and 20 rejected under 35 U.S.C. 103(a) as being unpatentable over unpatentable over Jindal (US Patent No 6,092,178) in view of AAPA (Applicants Admitted Prior Art).

18. In reference to claims 2,12 and 20, Jindal teaches the method, program instructions and an apparatus of claims 1,11 and 17 respectively. Jindal fails to teach wherein the request is a Boomerang Control Protocol (BCP) message. However, "Official notice" is taken that BCP is well known in the art as a process corresponding to request/response (also see Applicants Admitted Prior Art, specification pg 2 lines 20-25 & pg 3 lines 1-10).

It would have been obvious for one of ordinary skill in the art to modify Jindal to incorporate BCP. One would be motivated to do so because it is a well known protocol that implements a request/response process.

19. Claims 6-9,15,23,24,27 and 28 rejected under 35 U.S.C. 103(a) as being unpatentable over Jindal (US Patent No 6,092,178) in view of Alden et al (US Patent No 6,101,543).

20. In reference to claims 6 and , Jindal teaches a method for providing information associated with a network for selecting a content server (Abstract), the method comprising:

receiving a request for the server selection system for a response message (column 2 line 65 – column 3 line 25 and column 5 lines 20-67);

providing a response datagram, the response datagram corresponding to the response message, wherein the response datagram is associated with a network layer length, a transport layer length, and a network layer header length (column 3 lines 25-55 and column 6 line 45 – column 7 line 20);

providing an altered response datagram (Summary, an altered response datagram is inherent in any request-response system);

transmitting the altered response datagram to the node responsible for selecting a content server, wherein receipt of the altered response datagram provides information on network characteristics to the server selection system (column 3 lines 49-57 and column 9 lines 34-67);

“Official notice” is taken that datagram packets are well known in the art and that each packet must conform to a standard protocol stack. As illustrated in Figure 1 of Alden et al., the network layer is inherently greater in length than the transport layer length. This is because the network layer header is added to the packet thus altering it and making it a greater network layer length. The network layer length inherently includes the transport layer length, the transport layer header length and the network layer header length.

21. In reference to claim 7, Jindal teaches the method of claim 6 above. Jindal fails to teach wherein the request is a Boomerang Control Protocol (BCP) message. However, “Official notice” is taken that BCP is well known in the art as a process corresponding to request/response (also see Applicants Admitted Prior Art, specification pg 2 lines 20-25 & pg 3 lines 1-10).

It would have been obvious for one of ordinary skill in the art to modify Jindal to incorporate BCP. One would be motivated to do so because it is a well known protocol that implements a request/response process.

22. In reference to claim 8, Jindal teaches claim 7 wherein the response is a DNS reply (column 3 lines 49-57).

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23. In reference to claim 9, Jindal teaches the method of claim 6 above. Jindal fails to explicitly teach wherein the altered response datagram is padded with data (column 3 lines 12-35 & 46-66, column 6 lines 40-60 and column 7 lines 50-67).

24. In reference to claims 15,23,24,27 and 28, Jindal teaches the computer program product and apparatus of claims 11 and 17 respectively, wherein the network layer length of the response datagram is increased while the transport layer length field is unmodified. As illustrated in Figure 1 of Alden et al., the network layer is inherently increased in length to be greater than the transport layer length, with the transport layer length remaining as is. The network layer length inherently includes the transport layer length, the transport layer header length and the network layer header length.

Response to Arguments

25. Applicant's arguments with respect to claims 1-29 have been considered but are moot in view of the new ground(s) of rejection. See above rejections.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramy M. Osman whose telephone number is (571) 272-4008. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RMO

June 14, 2005


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